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10/043,856

01/11/2002

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22.1489

8450

7590

06/16/2009

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EXAMINER

ROSEN, NICHOLAS D

ART UNIT

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3625

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: JEAN-LUC POUS, DAVID L. MALONE, IAN T. SCHUUR and
PETER A. GOODE

Appeal No. 2008-002707
Application 10/043,856
Technology Center 3600

Mailed: June 16, 2009

Before DALE M. SHAW *Chief Appeals Administrator*
SHAW, *Chief Appeals Administrator*.

ORDER REMANDING TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on March 28, 2008. Upon review of the application, it has been determined that a remand to Examiner, via the Office of the Director of the Technology Center, is necessary to consider the following issues and to take necessary corrective action.

APPEAL BRIEF, APPEALED CLAIMS

Appellant has not appealed all rejected claims. Specifically, a review of the Grounds of Rejection on the record finds that rejections are outstanding for the following pending claims: 38, 42-62. The rejected claim that has not been appealed and/or argued for appeal is claim 38.

DISCUSSION

The Board of Appeals and Interferences (Board), in *Ex parte Ghuman*, <http://www.uspto.gov/web/offices/dcom/bpai/prec/rm081175.pdf> (BPAI May 14, 2008) (precedential), held that in appeals where rejected claims are expressly withdrawn, or are implicitly withdrawn by not presenting arguments in support of patentability, the Board will remand (or return) the application to the Examiner with instructions to cancel the expressly or implicitly withdrawn claims. *See also Manual of Patent Examining Procedure* (MPEP) § 1215.03 (8th ed. Rev. 6, Sept 2007).

CONCLUSION

Accordingly, it is

ORDERED that this application be returned to the Examiner:

- 1) to enter a paper canceling claim 38;
- 2) upon entry of the paper, to return the application to the Board for the consideration of appealed claims, and
- 3) for such further action as may be appropriate.

Appeal No. 2008-002707
Application No. 10/043,856

If there are any questions pertaining to this Order, please contact the
Board of Patent Appeals and Interferences at 571-272-9797.

DMS/nhl

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